

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

IN RE THE ADMINISTRATION OF)	ADMINISTRATIVE ORDER
THE PROBATE/MENTAL HEALTH)	No. 96-017
DEPARTMENT)	
_____)	

A committee composed of judicial officers, representatives of public and private (professional) fiduciaries, lawyers and Probate Court administrative staff met on several occasions in 1994, developed certain fee guidelines for professional fiduciaries,¹ and recommended that they be adopted by the Probate/Mental Health Department of the Superior Court. Fiduciary Fee Guidelines were adopted effective February 1, 1995.

Pursuant to Administrative Order 94-073, the committee met in November, 1995 to review the adopted Guidelines and to consider recommended revisions. The Presiding Judge of the Probate/Mental Health Department has received and considered comments and recommendations regarding the Guidelines. Based on the comments and recommendations, the previously adopted Guidelines have been revised.

The Presiding Judge of the Probate/Mental Health Department has considered the adopted and revised Guidelines and the Guidelines' general purpose of assisting department judicial officers in determining the reasonableness of fees for professional fiduciaries. The Guidelines have and will continue to help bring consistency, uniformity, predictability and equality of treatment of all private, professional fiduciaries into the process of reviewing and approving professional fiduciary fee requests.

The Guidelines as revised are not to be considered as setting minimum or maximum fees or rates, and department judicial officers will continue to determine on a case-by-case basis the reasonableness of a professional fiduciary's fee. Therefore,

IT IS HEREBY ORDERED adopting and approving the attached Professional Fiduciary Fee Guidelines and Estate Management Plan for use by the judicial officers and accountants of the Probate/Mental Health Department of the Superior Court of the State of Arizona in Maricopa County in reviewing and approving professional fiduciary fee requests.

IT IS FURTHER ORDERED that the effective date for use of these Guidelines shall be February 1, 1996.

¹"Professional fiduciary" is intended to include those private fiduciaries who are required to be registered with the Arizona Supreme Court pursuant to A.R.S. § 14-5701 as well as banks and trust companies which charge a fee for fiduciary services.

IT IS FURTHER ORDERED that the Guidelines and their effectiveness will be reviewed before November 30, 1996, with a report to the Presiding Judge of the Probate/Mental Health Department in order to determine whether the Guidelines should remain in effect or be modified in some way.

Dated this ____ day of February, 1996.

Hon. Robert D. Myers, Presiding Judge

Original: Clerk of the Superior Court

cc: Hon. Pamela J. Franks, Presiding Judge, Probate/Mental Health Dept.
Deborah Primock, Judicial Administrator, Probate/Mental Health Dept.
Ruth Gluch, Supervisor, Probate Court Administration
Marcus W. Reinkensmeyer, Deputy Court Administrator

**SUPERIOR COURT OF ARIZONA, MARICOPA COUNTY
PROBATE/MENTAL HEALTH DEPARTMENT
FIDUCIARY FEE GUIDELINES
FEBRUARY 1996**

A. SUGGESTED FEE SCHEDULE

<u>Service Provided</u>	<u>Fee Allowed</u>
1. Setup fee for a guardian, conservator, or guardian/conservator - for referral, investigation, and setup, allowed in the first year only.	\$600 total (allowed once)
2. Annual fee for a guardian - for annual client contact with the ward predicated upon monthly personal contact by the fiduciary or an employee trained in social work. (See Note D re companionship services.)	\$900 annually
3. Annual fee for a conservator - for estates of \$100,000 or less, plus .2% of the average value of the estate for the year in excess of \$100,000.	\$300 annually plus .2%
4. Check writing fee for a conservator - for each check written in excess of 5 checks per month. No charge will be allowed for the first 5 checks written each month. There shall be no charge for checks written to the fiduciary and the fiduciary's attorney and these shall not be counted toward meeting the "first five free" provision.	\$10 per check
5. Management fee for a conservator, generally not to exceed 3% of total receipts and disbursements. Neither the fiduciary's fee nor the fiduciary's attorney's fee shall be included in the disbursement total. The fiduciary's expertise, amount of work and investment performance will all be considered in determining the amount of the management fee. (This fee is in addition to the annual fee.)	Not to exceed 3% annually

NOTES:

- A. Extraordinary fees must be justified by a showing of necessity and billed at a reasonable hourly rate.
- B. Extraordinary costs must be necessary, reasonable, and documented.
- C. Any anticipated extraordinary fees must be explained in the estate management plan and on the fiduciary's itemized fee statement and affidavit.
- D. Companionship services should not exceed \$15.00 an hour plus mileage at \$0.29/mile. These are companionship services over and above the once monthly social worker contact already covered by the annual fee for guardian.
- E. Contract or "out-sourced" services (those services not performed by an employee of the fiduciary) provided to the ward or protected person for such things as accounting services, tax preparation, visitation, guardianship services, investment management and bookkeeping shall be billed to the ward in the same amount as paid by the fiduciary for each such service.

The Court does not endorse the practice of a fiduciary "marking up" or adding a profit margin to services which the fiduciary does not provide with the fiduciary's own employees. For example, if the fiduciary used an outside accountant to prepare the accounting for a fee of \$250.00, the fiduciary is allowed to charge the ward only the \$250.00. The fiduciary is allowed to charge for any related services provided by the fiduciary such as supervision or monitoring of the contract service provider.

B. **FIDUCIARY DUTIES - TYPICAL SERVICES**
(Services Not Considered Extraordinary)

1. Pre-Court Appointment (First Year)

- a. Meet prospective client and assess client's physical and mental status, need for guardianship, conservatorship, or both; assess placement needs.
- b. Contact family/friends regarding referral, prospective client's status, possible court proceedings, and willingness to serve.
- c. Obtain financial information. (When the referral is from Adult Protective Services or an attorney, this information is usually complete. If the referral is from another source, such as a hospital social worker, this information may be incomplete.) May need to establish a relationship with prospective client in order to review client financial records. (Financial records may be in "good condition" or in bags, boxes, and under beds.)

- d. Contact physician for medical opinion and to obtain medical report. (May require taking prospective client to physician's office).
 - e. Meet with attorney to provide case information and initiate legal proceedings.
 - f. Monitor prospective client (when necessary) pending court proceedings.
2. Obtain Court Appointment (First Year)
- a. Attend hearing.
 - b. Obtain surety bond.
 - c. Obtain certified copies of Letters.
3. Post-Court Appointment (First Year)
- a. Record Letters, if there is real property.
 - b. Change the mailing address for client's mail.
 - c. Obtain all insurance information.
 - d. Contact all financial institutions to close accounts, transfer funds, supersede on accounts, restrict accounts and change mailing address for statements, etc.
 - e. Change Payee for Social Security payments.
 - f. Contact all sources of income to change mailing addresses.
 - g. Contact all medical insurance companies and other insurance companies to obtain information on coverage and to change mailing address.
 - h. If real property, obtain condition of title report and appraisal, if necessary.
 - i. If real property, contact Assessor and County Treasurer to change mailing address of all records.
 - j. If there is an automobile, obtain title or duplicate title and check liability insurance coverage.
 - k. If stocks and bonds, either transfer into street name in a brokerage account or change mailing addresses on all issues. Obtain "basis" information when

possible.

- l. If furniture/personal property, list and obtain appraisal when necessary.
- m. Determine tax status, obtain copies of prior years' returns.
- n. Determine testamentary status, obtain original or copy of will.
- o. Determine funeral arrangements.
- p. Obtain information required for death certificate.
- q. Prepare inventory for filing with court.

4. Nursing Home Placement:

Supervise and coordinate client's needs.

- a. Medical, dental and optical appointments.
- b. Medical treatments.
- c. Medication.
- d. Social and emotional needs.
- e. Clothing and personal items.

C. FIDUCIARY DUTIES - SERVICES WHICH MAY BE
CONSIDERED EXTRAORDINARY

1. Home Placement (Provide 24 Hours On Call Services)

- a. Obtain staff.
- b. Supervise staff.
- c. Schedule staff.
- d. Prepare payroll.
 - i. Compute withholdings on paychecks.
 - ii. Prepare quarterly and yearly reports.
 - iii. Obtain workers' compensation coverage.

- iv. Obtain unemployment coverage.
 - e. Maintain house.
 - f. Maintain auto, if necessary
 - g. Oversee household monies.
 - i. Obtain receipts.
 - ii. Reconcile monthly.
 - h. Supervise and coordinate client's personal needs.
 - i. Nutrition.
 - ii. Hair appointments.
 - iii. Medication.
 - iv. Medical treatments.
- 2. Adult Foster Care Placement: Supervise and Coordinate Client's Needs.
 - a. Medical, dental, and optical appointments.
 - b. Medical treatments.
 - c. Medication.
 - d. Social and emotional needs.
 - e. Clothing and personal items.
- 3. Companionship Services (See Notes D and E above regarding charges)
 - a. Social visits.
 - b. Accompany for lunch, walks, shopping.
 - c. Prepare correspondence.
 - d. Routine physician visits or follow-up and status reporting.

D. FACTORS THAT MAY MAKE FIDUCIARY SERVICES EXTRAORDINARY

1. Review of papers and documents, which are in disarray, to identify and locate assets.
2. Notification of banks and financial institutions of estate status.
3. Obtaining insurance record information.
4. Sorting through boxes or files for information.
5. Degree of ease in accessing information.
6. Sizeable number of financial institutions to contact.
7. Family disagreement or dissention.
8. Character and values of family members, business associates of the ward and others.
9. Level of cooperation from client/ward.
10. Medical or placement crisis with the ward.
11. Level of monitoring required by ward.

E. **CHECKLIST FOR EVALUATION OF FEES**
(for evaluation of cases with fees in question)

1. What are the total administrative expenses? Attorney's fees, fiduciary fees, accountant, investment advisor, tax preparation, etc.
2. What is the make-up of the estate and its gross value? Cash, stocks, bonds, a business, real estate, art, antiques, collections.
3. What is the estate income?
4. What kind of management of assets was required?
5. Did real estate require more than routine management?
6. Did a business have to be run?
7. Who performed the various tasks? Were the tasks appropriate to the person performing them? Were billed tasks performed by an attorney which could have been performed by a paralegal, secretary, runner, accountant?

8. Was the time spent on any task excessive?
9. Were the tasks performed necessary? (In a probate, for example, could the property have been distributed by affidavit? Was a formal, court-approved accounting necessary?)
10. In a guardianship or conservatorship, what aspects of the ward's condition required unusual time and effort?
11. Who are the relatives/heirs/devisees? Did contentiousness among interested persons cause unusual expenditures of time and effort?
12. Is the hourly rate acceptable?
13. Are the attorney's and fiduciary's records of time spent and tasks performed complete and specific?
14. Are there duplications of time?
15. Was research billed in areas which should not have required research?
16. Are there steps an attorney should have taken to eliminate the need for litigation or unusual activities? A recent memorandum decision reverses a trial court's allowance of fees in a conservatorship because the attorney did not act "with reasonable care to avoid the unnecessary use of his service by the guardian and conservator". The attorney billed for services necessitated by the conservator's failure to perform and the attorney was therefore in breach of his fiduciary duties under Fickett because he did not act quickly to have the conservator (his client) removed. In the Matter of the Guardianship and Conservatorship of Harsh, Maricopa County Public Fiduciary v Finks, 1 CA-CV 92-0118 (1994).
17. Are the persons who received a copy of the accounting or petition for fees sufficiently competent or sophisticated to object, or is their interest (financial or otherwise) such that it's not worth the hassle?

SUPERIOR COURT OF ARIZONA, MARICOPA COUNTY

In the Matter of the
Guardian and/or Conservatorship
of

ESTATE MANAGEMENT PLAN

Case Number

1. Physical condition of person:
2. Anticipated care of ward, services to be provided:
3. Special needs of ward or services requested for ward:
4. Other special needs of ward:
5. Anticipated expenses for ward including project fiduciary fees:
6. Anticipated changes in finances/financial status:

Submitted by _____
Fiduciary Name

Date Prepared _____